

THE MAYOR'S ADVOCATE

L.A.'S ANTONIO VILLARAIGOSA SPEAKS FOR HIMSELF—
BUT HE RELIES ON THOMAS SAENZ'S COUNSEL.

No one ever told Thomas A. Saenz it would be easy being staff attorney for Los Angeles Mayor Antonio Villaraigosa. The hours are long, the responsibilities expansive, and every decision is subject to second-guessing in the city's ever-shifting political winds. Some even question the wisdom of the mayor's office having its own lawyer.

BY BILL BLUM

PHOTO BY VERN EVANS

Bill Blum is a Los Angeles-based administrative law judge and freelance writer.



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Case in point: Late last year the suit of African American firefighter Tennie Pierce revealed the hazards of brokering political deals. In November the Los Angeles City Council approved a \$2.7 million payment to Pierce, who had sued the city alleging harassment and racial discrimination after being tricked into eating dog food mixed into his spaghetti sauce at a station-house dinner. As the mayor's designee to the Los Angeles Claims Board, Saenz—along with the city attorney's representative—had endorsed the settlement and sent it to the council for ratification.

But the hefty size of the settlement, plus the publication of photographs suggesting that Pierce had perpetrated tawdry station-house pranks of his own, produced a public outcry. Just two weeks after the council approved the payment, the mayor's office broke ranks with Rocky Delgadillo, the elected city attorney now in his second term. Saenz helped Villaraigosa craft his first veto message, sending the Pierce case back to court. Within days, L.A.'s fire chief announced his resignation amid protests from leaders in the black community; some members of the city council blasted the mayor's action; and others questioned Delgadillo's competence for recommending a settlement in the first place.

"Certainly, there was criticism from some sources in the African American leadership," Saenz concedes. The dissenters had included the Rev. Jesse Jackson and the local chapter of the NAACP—usually kindred spirits of the Villaraigosa administration. "Whether [the Pierce fallout] has had an impact on the African American community as a whole is a complicated question," Saenz says. "I don't think it has. The mayor has consistently governed to represent all the communities in Los Angeles, and he has high levels of support in all communities."

Saenz adds that the working relationship between the mayor's office and the city attorney remains sound. "I don't know that there is a feud," he says, responding to reports of incompatibility published in the *Los Angeles Times*. "Whenever you have two elected officials, they are going to have their own independent views, agendas, and imperatives. Those views aren't always going to coincide. But does the fact that the mayor has his own counsel create issues? I'm sure it does."



Foremost among those issues is who speaks officially for the city on legal matters. "The city charter makes it very clear that the city attorney is the attorney for the mayor, the city council, and all city departments," says Nick Velasquez, Delgadillo's director of communications. Velasquez declines to comment on Villaraigosa's decision to create an Office of the Counsel to the Mayor shortly after his election in May 2005. Villaraigosa appointed Saenz as both his top legal advisor and his chief ethics officer.

Two years later, however, some City Hall observers are still skeptical. "One could read creating the office as a lack of confidence in the city attorney," says Joe R. Hicks, vice

president of Community Advocates, a nonprofit organization that focuses on race relations and civil rights in Los Angeles. "Either the mayor and the council are getting good advice from Delgadillo's office, or they're not. And if not, that needs to be addressed." Citing the Pierce case, Hicks argues that Saenz's appointment means city officials will inevitably receive conflicting legal views. "I don't see how this can be a good thing for the people of Los Angeles," he says.

The city, however, is no stranger to mayors who keep their own counsel. Both Tom Bradley and Richard Riordan hired attorneys for their offices at times during their administrations. James K. Hahn, Villaraigosa's predecessor as mayor and a former elected city attorney during the Riordan administration, did not hire his own lawyer.

"There is actually a long, complicated history of conflict between the mayor's office and the city attorney," says Raphael Sonenshein, a professor of political science at California State University, Fullerton, who was executive director of the Los Angeles Appointed Charter Reform Commission from 1997 to 1999. "It started with Riordan and Hahn—they were like oil and water."

According to Sonenshein, relations between Riordan and Hahn came to a boil in 1996 when a top aide to the mayor released confidential documents to opposing counsel in a business lawsuit without the city attorney's prior approval. During the succeeding debates over charter reform, Riordan advocated splitting the city attorney position, with an elected official serving as chief prosecutor and an appointed official advising the mayor and the city council. The charter commission ultimately rejected that proposal, and Riordan didn't pursue the idea.

Although by law only the city attorney can represent Los Angeles in court, Sonenshein regards the office of mayor's counsel as an indicator of changing times. "The city attorney used to be seen as a trusted, neutral administrator whose advice had the authority of the Supreme Court," he says. "It's hard for that to continue today. There's too much at stake and too many points of view. It may be inevitable that the city attorney's advice is going to be double-checked."

The mayor's office isn't the only local government entity to bring in separate counsel. In October 2006 the Los Angeles City Council hired a lawyer to work with the town's chief legislative analyst to help advise on pending legislation. In the long run, Sonenshein argues, such developments may be a good thing, as long as the city's legal position and representation don't get "muddled" in court.

The mayor's office agrees. "The legal and policy issues facing the mayor have become more complicated, not just with contracts and claims but with the entire administration of justice," says Robin Kramer, Villaraigosa's chief of staff. "It is entirely appropriate for the mayor to have the benefit of a legal perspective beyond the city attorneys, one that is direct and provides attorney-client privilege."

"The city attorney has to serve the entire city," Saenz says. "I serve only one person, and that's the mayor." He

likens his job to that of the White House counsel or the governor's legal affairs secretary, both positions independent of the respective offices of the attorneys general. "Nobody questions those offices," he says, "because they recognize that a chief executive would want separate legal counsel who does not have the divided loyalties that come from having to represent other branches of government." It's no different, he contends, in the municipal context.

After two years on the job, however, the track record of the Office of the Mayor's Counsel is decidedly mixed. Beyond the Pierce debacle, Saenz has been stymied in his

especially in the area of public integrity," Robles-Román says. "I act as an extra set of eyes."

The Villaraigosa transition team recruited widely for the counsel position, whittling down the candidates to six attorneys drawn from both the private and public sectors. The mayor selected Saenz, Kramer says, for his "legal acumen, very good judgment, and demonstrated commitment to civil rights and liberties." As chief ethics officer Saenz was charged with restoring the city's credibility following a series of pay-to-play scandals involving city contractors during the Hahn administration. Villaraigosa's first executive directive,

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attempts to augment a living-wage ordinance and to reorganize the huge Los Angeles Unified School District, the second-largest in the nation. Neither Villaraigosa nor Saenz, however, has expressed any second thoughts about the need for or significance of creating the Office of Mayor's Counsel.



Mayor Villaraigosa announced his plan for permanent in-house counsel—an office that eventually will include three lawyers—during the postelection transition period in 2005. Kramer, Villaraigosa's chief of staff, says Villaraigosa looked to Seattle, New York, Detroit, and other cities with mayoral counsel to design "an office structure to resonate with the mayor's goals."

The makeup of those offices varies according to each city's municipal charter. Seattle—which, like Los Angeles, elects its city attorney—has had a mayoral counsel since the 1970s. New York, which employs an appointed corporation counsel instead of a city attorney, has a mayoral counsel who also serves as a deputy mayor. Mayoral counsel from both cities regard their offices as well-established, accepted components of city government.

"In some respects my job is to act as a legal translator between the city attorney and the executive branch of city government," says Regina LaBelle, mayoral counsel in Seattle. "At times city departments may want to do something but feel limited by what the city attorney tells them. The departments don't always ask the right questions or appreciate the risks involved. That's when I step in." Although conflicts between the city attorney and the mayor do arise, LaBelle believes her office has helped to alleviate rather than aggravate those conflicts.

Carol A. Robles-Román, counsel to the mayor and deputy mayor for legal affairs in New York, also sees herself as a problem solver. "It's important for elected officials like the mayor to have counsel on issues of law that come up,

issued on the day of Saenz's appointment, mandated ethics training for the mayor and his staff, as well as stricter enforcement of recusal laws and timely filing of all required disclosure forms.



Saenz brought a lot to the mayor's table. A rising star in the tight-knit fraternity of public-interest lawyers, he had built his reputation as a litigator for the Mexican American Legal Defense and Educational Fund (MALDEF) in lawsuits seeking political reform. He says his approach—using the law to spark social change—hasn't changed even if he has swapped business letterheads. "If you're doing a good job," he says, "and that's from the mayor on down, you need to shake things up a little bit."

It also didn't hurt his job prospects that Saenz, like Villaraigosa, is a native Angeleno. A product of Alhambra High School, just east of the city, Saenz grew up in what he calls a blue-collar, middle-income Latino family. His father worked as a cable splicer for the Los Angeles Department of Water and Power before moving into management; his mother was a secretary in the Alhambra schools. His only sibling—a brother one year older—became a career Army officer and is currently stationed in Vietnam, leading an effort to find the remains of American MIA's.

"My parents were both civil servants," says Saenz, adding that he derived from them an "appreciation of the importance of government and the importance of serving the public." He also says he "learned a lot about the importance of equity and justice," which in turn sparked his early interest in becoming a lawyer.

An exceptional student (he skipped eighth grade), Saenz attended Yale University, where he graduated summa cum laude in 1987. He went on to Yale Law School, where he won the Potter Stewart Prize for moot court. He then landed two federal judicial clerkships, one each at the trial and appellate levels. His first clerkship was spent with the

late Judge Harry Hupp of the Central District of California; his second was with Judge Stephen Reinhardt of the Ninth U.S. Circuit Court of Appeals.

Saenz began his career with MALDEF in 1993, hiring on initially to handle employment and immigrant-rights cases. Within a year he got what he terms his "big break," a spot on a team that successfully challenged Proposition 187, the 1994 ballot initiative that sought to deny undocumented immigrants social services, health care, and rights to public education.

"Soon enough, in 1996, I was named regional counsel, heading MALDEF's L.A. office and involved in other big issues and cases," Saenz says. There were hard-fought losses as well as victories. The losses include unsuccessful efforts to overturn Proposition 227—the initiative to reinforce teaching English in the public schools—as well as a facial challenge to California's 2001 electoral redistricting plan, which Saenz argued before a three-judge panel that included Judge Reinhardt, his old boss. The triumphs include a much-publicized \$50 million settlement of a nationwide discrimination class action against Abercrombie & Fitch. By the time Villaraigosa's transition team called, Saenz had been named MALDEF's national vice president for litigation.

Being on the inside, however, has meant a shift in perspective. As a public-interest plaintiffs lawyer, Saenz often battled the establishment. Now he's part of it. "It's an adjustment," he admits. "But I think it is simply a different approach to the same end. There are more constraints now, but there's also more access."

In his current position, Saenz works mostly behind the scenes. "It's not my job to have a high profile," he acknowledges. Betraying more than a hint of nostalgia, he adds, "I don't get to go to court much anymore." He can't, of course. Although Saenz is often cited as the architect of many of Villaraigosa's policies, the city attorney's office defends those policies in court.

Still, Saenz has found himself at the center of legal controversies that the mayor's decisions have ignited. The Tennie Pierce settlement veto—and the tensions that it raised in the black community and in the city attorney's office—is not the only move that has backfired. Some of Villaraigosa's most important policy initiatives have also encountered unexpected and widely publicized setbacks.

Last November, for instance, Villaraigosa announced an expansion of the city's living-wage ordinance, which extended the law for the first time beyond businesses that contract with the city to include a corridor of hotels operating near Los Angeles International Airport. Under the terms of the enhanced ordinance, about a dozen hotels near LAX would be required to provide their employees "living wages," raising hourly pay to \$9.39 for workers with health benefits, or \$10.64 without benefits. But after local business leaders collected enough signatures to place the revised ordinance on the May 2007 ballot, the mayor and the city



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council rescinded the law and replaced it with a compromise measure calling for a package of commercial incentives ranging from \$1 million in street improvements in the hotel corridor to possible tax reductions.

"The broader business community had a concern that this was a slippery slope, and that this would be the first of many such ordinances to come," Saenz says. "I was directly involved in trying to craft a compromise." To placate business and to head off a costly ballot showdown, a quarantine provision was inserted into the ordinance that, according to Saenz, would establish "both substantive requirements for future living-wage enactments and procedural hurdles."

Although the city council ratified the revised ordinance in February, a group of hotels filed suit, arguing that the compromise was essentially the same as the original ordinance and that the people were entitled to vote on it. Superior Court Judge Dzintra I. Janavs agreed, ordering that publication of the ordinance be stayed, effectively preventing it from taking effect. In May another superior court judge issued a final ruling, blocking the ordinance because it had not been put to a referendum.



Judge Janavs also upended what many consider the cornerstone of Villaraigosa's agenda: reform of the Los Angeles Unified School District. Responding to a complaint brought by the district, the California School Boards Association, the League of Women Voters, a group of concerned parents, and other groups and individuals, she struck down AB 1381, a complex bill that Villaraigosa's critics say would have transferred control over the public schools to the mayor.

Signed into law by Governor Schwarzenegger last September, AB 1381 would have given the mayor and a newly created partnership of parents and community leaders direct control of three "clusters" of low-performing schools. The bill also called for establishing a "council of

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mayors" that would be drawn from elected leaders in all the cities and unincorporated areas within the sprawling district, but would be heavily weighted in favor of the mayor of Los Angeles. In a stinging rebuke last December, however, Judge Janavs ruled that the law ran afoul of several state constitutional provisions by transferring management of the district from elected board members to entities that are not part of the school system, and by ignoring the rights of voters to elect board members. She also cited a 1946 amendment to the state constitution removing municipal authority over public education in order to avoid potential conflicts of interest between city officials and schools.

In April, the Second District Court of Appeal upheld Janavs's decision, dealing a body blow to the mayor's plans. (*Mendoza v. State of California*, 149 Cal. App. 4th 1034 (2007).) Saenz estimates he spent 80 percent of his time last summer on AB 1381, shuttling back and forth to Sacramento for drafting sessions and debates. One month after the ruling, Villaraigosa announced that he would abandon the measure.

"Tom is a terrific lawyer," says Fredric Woocher, a veteran Santa Monica public-interest lawyer with Strumwasser & Woocher who represented most of the plaintiffs in the challenge to AB 1381. "But he was on the wrong side of the constitution this time."

Others, including recently retired Los Angeles board of education member David Tokofsky, are more critical. Instead of letting voters decide the issue, Tokofsky claims, Saenz "shortcut the legislative process" in L.A. and Sacramento, and "played the role of a lawyer who took this stuff to the back room." Some opponents of AB 1381 characterized the district-reform initiative as little more than a "power grab" on the part of Villaraigosa and, by extension, Saenz.

Saenz shakes his head in disbelief at such comments. "Changing the schools is critical," he argues. "The mayor is absolutely right when he characterizes education as the civil rights issue of today. We can't have a world-class city without a world-class school system."

Saenz also denies that Villaraigosa's school plan was intended to usurp the school board's authority. "Why would the mayor want to do this?" Saenz asks. "From a purely self-interested perspective, taking on this extraordinarily difficult issue is really quite dangerous for him. He doesn't get any power from it unless he delivers, and that's political power down the line. He could be a very successful mayor without this issue. He's taken it on only because it's so important."

And there's the rub, if not for Villaraigosa then certainly for Saenz. If some of the mayor's top legal initiatives have failed, just what does that say about the clout of the Office of Mayor's Counsel or the quality of its work?

"Setting up the office was a reasonable idea because of the out-of-the-box initiatives Villaraigosa was pushing," says Sonenshein of Cal State, Fullerton. "It wouldn't have been the city attorney's job to advocate for school reform, though

the office did a good job representing the plan in court. Even though Villaraigosa lost, it didn't hurt to have his own counsel. They had a shot."

But Sonenshein tempers his defense of the office. "This is not an argument to say the mayor should set up his own law firm for ordinary city business to rival the city attorney," he says. "That's a bright line that should not be crossed," Sonenshein contends, adding that so far he feels Villaraigosa and Saenz have not done so.



Acknowledging such concerns, Saenz points out that he remained on the sidelines while the city attorney represented the mayor in the school-reform case. "When an office and a person are an unknown," he says, "there is going to be some trepidation." But after two years at his post, Saenz says, he believes city officials are starting to see his office more as a "critical partner" of the city attorney than as a threat to its authority.

At least one high-ranking member of the city attorney's office agrees. "Tom is a creative and responsive client," says Valerie Flores, managing assistant city attorney in charge of public integrity, who has worked with Saenz on both the living-wage and school-board cases. "The fact that he is also a lawyer facilitates a very productive relationship in terms of developing litigation strategy and setting litigation goals."

More fundamentally, Saenz believes his track record proves the worth of his office. Despite the setbacks in other areas, he lists as successful initiatives those aimed at revamping the city's conflict-of-interest codes and changes to the appointment process for more than 300 mayoral commissioners that have resulted in greater ethnic diversity.

Saenz also is crafting procedures to rework the city's risk-management practices, which he says will save time and litigation costs. And in March—heeding Saenz's advice, he says—Villaraigosa exercised the second veto of his term, striking down a new ordinance authorizing the sale to private developers of vertical air rights over the convention district. Following his veto, the city council passed a compromise that accorded the mayor's office a role in reviewing such sales.

Saenz still isn't prepared to second-guess the mayor's pursuit of AB 1381, or his own role in that process. He still considers the bill a success. "AB 1381 placed an external pressure on the school board that it didn't feel before," he says. Indeed, soon after the appellate decision, the district's superintendent pledged to take action to counter some of the problems Villaraigosa and Saenz had identified, including the system's alleged inefficiencies and lack of accountability. And in May, a slate of pro-Villaraigosa candidates won election to the school board, giving the mayor's allies a working majority.

"The mayor is in the education business to stay," Saenz insists. "I'm not ready to admit defeat." ■